

(b) This section does not require a health benefit plan that administers its own pharmacy benefits to issue an identification card separate from any identification card issued to an enrollee to evidence coverage under the health benefit plan, if the identification card contains the elements required by Subsection (a) of this section.

Sec. 4. RULES. The commissioner shall adopt rules as necessary to implement this article.

SECTION 5. This Act takes effect September 1, 1999.

SECTION 6. (a) This Act applies only to a person acting as an administrator, as that term is defined by Subdivision (1), Section 1, Article 21.07-6, Insurance Code, as amended by this Act, with respect to pharmacy benefits on or after January 1, 2000. A person acting as an administrator with respect to pharmacy benefits before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) An administrator, as that term is defined by Subdivision (1), Section 1, Article 21.07-6, Insurance Code, as amended by this Act, is not required to issue a new identification card to an individual, as required by Section 19A, Article 21.07-6, Insurance Code, as added by this Act, if the identification card held by the individual on the effective date of this Act contains the elements described by Subdivisions (2) through (5), Subsection (b), Section 19A, Article 21.07-6, Insurance Code, as added by this Act. A new card complying with Section 19A, Article 21.07-6, Insurance Code, as added by this Act, must be issued at the time the individual's coverage is modified.

(c) A health benefit plan, as that term is defined by Section 1, Article 21.53L, Insurance Code, as added by this Act, is not required to issue a new identification card to an enrollee, as required by Section 3, Article 21.53L, Insurance Code, as added by this Act, if the identification card held by the enrollee on the effective date of this Act contains the elements described by Subdivisions (2), (3), and (4), Subsection (a), Section 3, Article 21.53L, Insurance Code, as added by this Act. A new card complying with Article 21.53L, Insurance Code, as added by this Act, must be issued at the time the enrollee's coverage is modified.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 15, 1999: Yeas 30, Nays 0; May 17, 1999, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 19, 1999, House granted request of the Senate; May 30, 1999, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 12, 1999, by a non-record vote; May 19, 1999, House granted request of the Senate for appointment of Conference Committee; May 29, 1999, House adopted Conference Committee Report by a non-record vote.

Approved June 18, 1999.

Effective September 1, 1999.

CHAPTER 1268

S.B. No. 1272

AN ACT

relating to the authority of a political subdivision to prepare and implement a regional habitat conservation plan or habitat conservation plan or to enter into a conservation agreement.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 83, Parks and Wildlife Code, is amended by designating Sections 83.001 through 83.004 as Subchapter A and adding a heading to Subchapter A to read as follows:

SUBCHAPTER A. FEDERAL-STATE AGREEMENTS

SECTION 2. Subchapter A, Chapter 83, Parks and Wildlife Code, as designated by this Act, is amended by adding Section 83.005 to read as follows:

Sec. 83.005. *CONSERVATION AGREEMENTS FOR PROTECTION OF SPECIES.* (a) Any conservation agreement between a political subdivision of the state and the United States Department of the Interior must be developed in consultation with the Parks and Wildlife Department.

(b) In this section, "conservation agreement" includes an agreement between the state or a political subdivision of the state and the United States Department of the Interior under the federal act that does not relate to a federal permit as defined by Section 83.011.

SECTION 3. Chapter 83, Parks and Wildlife Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. HABITAT PROTECTION BY POLITICAL SUBDIVISIONS

Sec. 83.011. *DEFINITIONS.* In this chapter:

(1) "Biological advisory team" means three or more professional biologists retained to provide biological guidance to plan participants.

(2) "Endangered species" means a species listed by the United States Department of the Interior as endangered or threatened under the federal act.

(3) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.

(4) "Federal permit" means a permit issued under Section 7 or 10(a) of the federal act.

(5) "Governmental entity" means a political subdivision of the state, including:

(A) a municipality; and

(B) a county.

(6) "Habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit:

(A) that does not require the regulation of non-habitat preserve land; and

(B) for which the land to be used as habitat preserves, at the time of application for the federal permit:

(i) is owned by a plan participant; or

(ii) is subject to a contract agreed to by each owner of land in the habitat preserve or proposed habitat preserve providing that all or part of the owner's land be used or managed as a habitat preserve.

(7) "Habitat preserve" means land set aside or managed for the protection of endangered species under a federal permit.

(8) "Harm" means significant habitat modification or degradation that, by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, or migrating, is the proximate cause of:

(A) the death of a member of an endangered species; or

(B) the physical injury of a member of an endangered species.

(9) "Land development standards" means rules or ordinances regulating the development of land, including impervious cover limitations, building setbacks, zoning, floor-to-area ratios, building coverage, water quality controls and regulations, landscaping, building height, development setbacks, compatibility standards, traffic analyses, driveway cuts, impact fees, and transfer of development rights. The term does not include fire or building codes or restrictions on the withdrawal of groundwater.

(10) "Mitigation fee" means a charge or in-kind contribution that is based on the amount of harm and is paid or provided to a plan participant in exchange for mitigation credit to be used to comply with the federal act.

(11) "Plan participant" means a governmental entity that develops, attempts to develop, adopts, approves, or participates in a regional habitat conservation plan or habitat conservation plan.

(12) "Regional habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit that requires the acquisition or regulation of land or interests in land not owned by a plan participant at the time of application for a federal permit.

Sec. 83.012. **PURPOSE.** The purpose of this subchapter is to:

(1) establish the requirements for and authority of a governmental entity to regulate wildlife through the development, financing, and implementation of a regional habitat conservation plan or a habitat conservation plan;

(2) encourage governmental entities to use the authority under this subchapter to develop and implement habitat conservation plans instead of regional habitat conservation plans;

(3) coordinate, to the greatest extent practicable, habitat preserves with lands set aside or to be set aside under local, state, or federal laws or regulations;

(4) prohibit plan participants from devaluing land containing endangered species or endangered species habitat through plan participant actions; and

(5) require plan participants of existing regional habitat conservation plans to comply with the requirements of this subchapter so that existing regional habitat conservation plans become habitat conservation plans as quickly as possible.

Sec. 83.013. **AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION.** (a) The department or a political subdivision may participate in the study and preparation for and creation of a habitat conservation plan.

(b) Subject to this subchapter, the department or a political subdivision may participate in the study and preparation for and creation of a regional habitat conservation plan.

(c) Subject to this subchapter, a political subdivision, including a municipality acting within its corporate limits or its extraterritorial jurisdiction, in order to facilitate the creation of a habitat preserve and the setting aside of land to protect a species protected under a conservation agreement, may:

(1) purchase land, easements, or leases; and

(2) enter into an agreement with a landowner to establish alternative land development standards for a tract of land.

(d) A plan participant may apply for a federal permit in conjunction with a regional habitat conservation plan only if the qualified voters of a plan participant have authorized the issuance of bonds or other debt financing in an amount equal to the estimated cost of acquiring all land for habitat preserves within the time required by this subchapter or the plan participant has demonstrated that adequate sources of funding exist to acquire all land for habitat preserves within the time required by this subchapter.

(e) A governmental entity may not implement a regional habitat conservation plan or apply for a federal permit in conjunction with a regional habitat conservation plan if:

(1) the federal act is repealed; or

(2) the endangered species that are subject to conservation and protection under the federal permit cease to be listed as endangered or threatened by the United States Department of the Interior.

Sec. 83.014. **LIMITATION OF POWERS.** (a) A governmental entity may not impose a regulation, rule, or ordinance related to endangered species unless the regulation, rule, or ordinance is necessary to implement a habitat conservation plan or regional habitat conservation plan for which the governmental entity was issued a federal permit. This subsection does not limit the authority of a governmental entity to adopt a rule, regulation, or ordinance restricting the withdrawal of groundwater.

(b) A governmental entity may not discriminate against a permit application, permit approval, or the provision of utility service for land that:

- (1) is or has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or habitat conservation plan;
- (2) is designated as critical habitat under the federal act; or
- (3) has endangered species or endangered species habitat.

(c) A governmental entity may not deny or limit available water or wastewater service to land in the service area of the governmental entity that has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or in a habitat conservation plan. For purposes of this subsection, a governmental entity may not remove land from its water or wastewater utility service areas after the date established under Section 88.018(b).

(d) A governmental entity may not, as a condition for the issuance of a permit, approval, or service, require a person to:

- (1) pay a mitigation fee to a plan participant;
- (2) set aside, lease, or convey land as habitat preserve; or
- (3) pay a mitigation fee for land set aside or restricted from development under local, state, or federal law or regulation.

Sec. 88.015. **BIOLOGICAL REVIEW; CRITERIA.** (a) A regional habitat conservation plan, including any mitigation fee, shall be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan.

(b) The size of proposed habitat preserves shall be based solely on the amount of harm to the endangered species to be protected in the regional habitat conservation plan.

(c) The plan participants, together with the commission and the landowner members of the citizens advisory committee, shall appoint a biological advisory team. At least one member shall be appointed by the commission and one member by the landowner members of the citizens advisory committee. The member appointed by the commission serves as presiding officer of the team. The team shall assist in:

- (1) the calculation of harm to the endangered species; and
- (2) the sizing and configuring of the habitat preserves.

(d) Meetings of the biological advisory team are subject to the open meetings law, Chapter 551, Government Code, and all work product of the biological advisory team is subject to the open records law, Chapter 552, Government Code.

Sec. 88.016. **CITIZENS ADVISORY COMMITTEE.** (a) The plan participants shall appoint a citizens advisory committee to assist in preparing the regional habitat conservation plan and the application for a federal permit.

(b) At least four members or 33 percent of the citizens advisory committee, whichever is greater in number, must own undeveloped land or land in agricultural use in the regional habitat conservation plan area. A landowner member may not be an employee or elected official of a plan participant or any other local, state, or federal governmental entity.

(c) Not later than the 90th day after the initial identification of the proposed preserve system for the regional habitat conservation plan, the plan participants shall appoint one additional landowner, who owns land within the proposed habitat preserve system, to the citizens advisory committee. The additional landowner member must comply with Subsection (b).

(d) The commission shall appoint one representative to the citizens advisory committee. The commission's representative is a voting member of the committee.

Sec. 88.017. **DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN.** (a) Meetings of the citizens advisory committee and meetings of the plan participants regarding planning, development, and implementation of the regional habitat conservation plan are subject to the open meetings law, Chapter 551, Government Code.

(b) All data, reports, and other information regarding the regional habitat conservation plan, including field notes, lab notes, and any other information relied on by the biological advisory team, are subject to the open records law, Chapter 552, Government Code.

(c) Not later than the 60th day after the initial identification of the proposed habitat preserve system for the federal permit, the plan participants shall notify in writing each owner of land identified by the plan participants as habitat preserve or potential habitat preserve. The plan participants shall use the county tax rolls to identify the owners of land identified as habitat preserve or potential habitat preserve. The written notice must include at least the following information:

- (1) the tax identification and parcel numbers;
- (2) the owner's name and address;
- (3) an explanation of the designation or possible designation of the tract as habitat preserve or potential habitat preserve under the regional habitat conservation plan;
- (4) identification of the citizens advisory committee members, including telephone numbers, addresses, and the group that each committee member represents;
- (5) identification of employees or agents of plan participants who can provide information about the regional habitat conservation plan;
- (6) the date of the next citizens advisory committee meeting or plan participant meeting regarding the regional habitat conservation plan; and
- (7) a description of the status of the regional habitat conservation plan.

Sec. 83.018. PRESERVE ACQUISITION. (a) The designation of a tract of land as habitat preserve or potential habitat preserve or the presence of endangered species or endangered species habitat may not be considered in determining the fair market value of the property for acquisition as a habitat preserve.

(b) A change to plan participant rules and regulations, including land development standards, that occurs after the earliest date that the biological advisory team, citizens advisory committee, or plan participant initially identifies a tract of land as habitat preserve or potential habitat preserve may not be considered in determining the fair market value of the land for acquisition as a habitat preserve.

(c) The plan participants shall make offers based on fair market value to the landowners for the acquisition of fee simple or other interest in land designated in the regional habitat conservation plan as habitat preserve not later than two years after the issuance of the federal permit or three years after the initial application for the federal permit, whichever is earlier. Acquisition of all habitat preserves must be completed not later than the fourth anniversary of the date on which the federal permit was issued. A plan participant subject to this subsection who does not meet an applicable deadline shall file an application to amend the federal permit to remove the nonacquired habitat preserve land from the regional habitat conservation plan as a habitat preserve not later than the 60th day after the fourth anniversary of the date on which the federal permit was issued.

Sec. 83.019. NOTICE AND HEARING REQUIREMENTS. (a) A plan participant must comply with the notice and hearing requirements of this section before adopting any regional habitat conservation plan, plan amendment, ordinance, budget, fee schedule, rule, regulation, or order to implement this subchapter.

(b) The plan participant, individually or through interlocal contract, shall publish a notice, including a brief description of the proposed action and the time and place of a public hearing on the proposed action, not later than the 30th day before the public hearing in the newspaper of largest general circulation in the county in which the plan participant proposing the action is located.

(c) A public hearing on the proposed action shall be held at the time and place specified in the notice.

Sec. 83.020. GRIEVANCE WITH DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. (a) An individual appointed to a citizens advisory committee under Section 83.016(b) may file a grievance with the commission regarding the development of a regional habitat conservation plan under this subchapter if the individual believes that the

plan is being developed in violation of this subchapter. The individual filing the grievance must have been a member of the citizens advisory committee for the plan named in the grievance.

(b) A grievance must be filed under this section not later than the 60th day after the date the plan is approved by the plan participants. The grievance must cite each provision of this subchapter alleged to have been violated during the development of the plan and must describe each act alleged to have violated this subchapter.

(c) The commission shall review a grievance filed under this section to determine whether the plan is being developed in compliance with this subchapter. If after reviewing the grievance the commission finds that the grievance has no merit, the commission may dismiss the grievance. If the commission finds that the grievance does have merit, the commission must hold a public hearing in accordance with Chapter 551, Government Code. The commission shall take testimony from each plan participant and from the individual filing the grievance. On conclusion of testimony, the commission shall vote on whether to approve or dismiss the grievance or to schedule a public hearing not later than the 30th day after the conclusion of the initial public hearing and to vote after the conclusion of that hearing whether to approve or dismiss the grievance.

(d) If the commission approves the grievance, the commission shall instruct the plan participant or participants to amend the plan so that it will comply with this subchapter. The plan participant may not submit an application for a federal permit until the commission is satisfied that its instructions to amend the plan to comply with this subchapter have been carried out.

(e) A plan participant in a plan that is the subject of a grievance filed with the commission may not submit an application for a federal permit before the commission:

(1) has dismissed the grievance; or

(2) if the commission approves the grievance, has determined that the commission's recommended amendments to the plan have been made.

(f) If an individual files a grievance under this section, that individual may not file a subsequent grievance.

SECTION 4. (a) Section 83.006, Parks and Wildlife Code, is repealed.

(b) The repeal by this Act of Section 83.006, Parks and Wildlife Code, notwithstanding, a county may continue to enforce a regional habitat conservation plan that has been formally approved by the United States Fish and Wildlife Service as authorized by Subdivision (2), Subsection (c), Section 83.006, Parks and Wildlife Code, as that section existed immediately before its repeal by this Act, and that former law is continued in effect for that purpose.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act applies only to a regional habitat conservation plan for which an application for a federal permit was submitted on or after January 1, 1999.

(b) Subsections (a) and (b), Section 83.018, Parks and Wildlife Code, as added by this Act, apply to the acquisition of land by a regional habitat conservation plan for which a federal permit was issued before September 1, 1999, regardless of the date the application was submitted.

SECTION 6. This Act takes effect September 1, 1999.

Passed the Senate on April 23, 1999, by a viva-voce vote; May 11, 1999, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 13, 1999, House granted request of the Senate; May 24, 1999, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 6, 1999, by a non-record vote; May 13, 1999, House granted request of the Senate for appointment of Conference Committee; May 20, 1999, House adopted Conference Committee Report by a non-record vote.

Approved June 18, 1999.

Effective September 1, 1999.